



**IN THE  
SUPREME COURT OF THE  
UNITED STATES**

**October Term, A. D. 1921**

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**No.** \_\_\_\_\_

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**SIoux CITY BRIDGE COMPANY,**  
*Petitioner,*  
**vs.**  
**DAKOTA COUNTY, NEBRASKA,**  
*Respondent.*

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**In the Matter of the Application of Sioux City Bridge Company for a Writ of Certiorari to the Supreme Court of the State of Nebraska.**

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**PETITION FOR WRIT OF CERTIORARI**

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*To the Honorable, the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

The Petition of Sioux City Bridge Company for a writ of certiorari directed to the Supreme Court of the State of Nebraska, and ordering that the record in a certain cause be certified to this Honorable Court for final review and determination according to law, said appealed cause being entitled as follows:

"In the Supreme Court of Nebraska; Sioux City Bridge Company, Plaintiff and Appellant, vs. Dakota County, Nebraska, Defendant and Appellee."

Your Petitioner, Sioux City Bridge Company, respectfully shows to this Honorable Court as follows:

### I

Your Petitioner is and was at all times hereafter referred to a corporation organized and existing under the laws of the State of Iowa, and was and is the owner of a certain railway bridge located at Sioux City, Iowa, spanning the Missouri River, a portion of said bridge being in the State of Iowa and a portion in Dakota County, Nebraska.

### II

The controversy in this case is the valuation of the portion of said bridge in Dakota County, Nebraska, for taxing purposes.

### III

*Section 6364 Revised Statutes of Nebraska, 1913, provides:*

"All persons, companies, or corporations owning, controlling or operating any highway or railroad bridge independent of a railroad system over any stream or river forming the boundary line between this and any other state, shall be required to list the same for taxation, and the same shall be assessed and taxed at its true value in money as personal property. In arriving at one-fifth of such value, if such bridge is constructed

over a navigable stream, the value of the same to the center of the channel of such stream, together with all rights, privileges and franchises connected therewith or belonging thereto, shall be taken into consideration in ascertaining the true value of such bridge property for taxation; and it shall be the duty of such persons or companies or corporations by their president, vice president, managing agent or the superintendent of such bridge, to make out a return to the proper assessor, giving the dimensions of the bridge in the county where it is located, together with a full statement of its rights, privileges and franchises, and the same shall be returned by the assessor."

In the Spring of 1918 the County Assessor of Dakota County made out a schedule in which he pretended to describe the property of the Sioux City Bridge Company in Dakota County, but in which he placed the lump sum value of its property at \$600,000.00. He forwarded such schedule to the taxing officer of the Sioux City Bridge Company for signature. The Sioux City Bridge Company refused to sign the schedule on the ground that the valuation was excessive and returned the same to the County Assessor unsigned; and requested that the valuation be fixed at a less amount. The Assessor refused to reduce the valuation and made an entry upon his books that the value of the Sioux City Bridge Company's property for taxing purposes was fixed at \$600,000.00. The Sioux City Bridge Company appealed to the Board of Equalization for relief.

On June 18, 1918, the County Board of Equalization, by its order, increased the valuation of the bridge in Dakota County for taxing purposes to \$700,000.00. The order of the Board of Equalization was as follows:

"Dakota City, Nebraska, June 18, 1918.

The Board of Equalization for assessment of property within and for Dakota County, Nebraska, met in regular session at eleven o'clock A. M. Present: O. W. Fisher, Chairman; A. Ira Davis, John Seller, and George Wilkins, County Clerk; J. P. Rockwell, County Assessor, and George W. Leamer, County Attorney.

At this time the matter of the equalization of the value and assessment of that part of the bridge crossing the Missouri River and owned by the Sioux City Bridge Company which is taxable in Dakota County, came on for hearing.

Ward Evans, City Attorney for South Sioux City, appeared and asked to have the valuation of the said bridge, which is commonly known as the "high bridge," raised. William Mueller appeared on behalf of the Sioux City Bridge Company and asked to have the valuation and the assessment of said bridge lowered.

Whereupon the Board ordered that the value and assessment of the approach of said bridge be raised from \$150,000.00 to \$200,000.00 and that the valuation and assessment of the bridge proper be raised from \$450,000.00 to \$500,000.00 or the total value and assessment of the bridge and approach be raised from \$600,000.00 to \$700,000.00.

The said Sioux City Bridge Company by William Mueller duly excepts to said order."

*Section 6440 Revised Statutes Nebraska, 1913, provides:*

"Appeals may be taken from any action of the county board of equalization to the District Court within twenty days after its adjournment, in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all

taxes affected thereby, which may be collected, shall be kept by the treasurer in a special fund without distribution. The Court shall hear the appeal as in equity and without a jury, and determine anew all questions raised before the board which relate to the liability of the property to assessment, or the amount thereof, and any decision rendered therein shall be certified by the clerk of the court to the county clerk, who shall correct the assessment books in his office accordingly. If the tax books have been delivered to the treasurer of the county for the collection of such tax before the determination of such appeal in the District Court, a copy of such decision shall be certified to the treasurer of the county, who shall thereupon distribute or return such tax so held, in accordance with such decision, and the treasurer shall correct his record to conform to such decision, unless a further appeal be taken to the Supreme Court, in which case the treasurer shall hold said tax until the final determination of the appeal in that Court."

Your Petitioner duly appealed to the District Court of Dakota County from the order of the Board of Equalization alleging as ground of complaint as follows:

"Comes now Your Petitioner, Sioux City Bridge Company, a corporation of the State of Iowa, and for its petition on appeal from the order of the Board of Equalization of Dakota County, Nebraska, fixing the valuation of the bridge and approach of said Sioux City Bridge Company in Dakota County at \$700,000.00 and respectfully shows to the court that said valuation is excessive and should be reduced for the following reasons:

1. Said property within the jurisdiction of Dakota County is not worth on the market the sum fixed by said Board of Equalization.
2. Said valuation is not a fair and reasonable valuation.

3. Said valuation is not the actual money value of said property but is greatly in excess thereof.

4. Said valuation is in excess of the original cost of said bridge and disregards the elements of depreciation, said bridge being more than thirty years old.

5. Said valuation was fixed by the Board of Equalization of Dakota County without evidence and arbitrarily and irrespective of the true facts.

6. Said valuation if permitted to stand and the Sioux City Bridge Company is compelled to pay taxes thereon, will result in the Sioux City Bridge Company being denied equal protection of the law, and being deprived of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

7. Said valuation if permitted to stand will violate the Constitution of Nebraska which requires that the taxing burden shall be uniform and said valuation of said property is out of proportion to and greatly in excess of the relative valuation of other property in Dakota County.

WHEREFORE, Your Petitioner, Sioux City Bridge Company, prays the Court to reduce said valuation fixed by the Board of Equalization of Dakota County to such sum as justice and equity require, which valuation, Your Petitioner declares, does not exceed \$350,000.00."

Issue was joined by Dakota County in the District Court and a trial de novo was had and the District Court entered its decree fixing the valuation at \$700,000.00.

From that decree Your Petitioner appealed to the Supreme Court of Nebraska.

*Section 1, Article 9 of the Constitution of Nebraska then in force provided:*

"The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct. \* \* \*"

The evidence before the District Court, and of course before the Supreme Court of Nebraska, showed, without dispute, that whereas the property of your Petitioner had been valued for taxing purposes at 100% or more of its true value, that real estate and other property in Dakota County was universally valued at only 55% of its true value for taxing purposes and your Petitioner claimed, both in the District Court and in the Supreme Court of Nebraska, that this discrimination against your Petitioner by the Board of Equalization of Dakota County and the taxing authorities denied to your Petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Nebraska affirmed the decree of the District Court of Dakota County and in its opinion in the case held:

"Where property is assessed for taxation at its true value, and other property in the district is assessed at 55 per cent of its true value, the remedy, to secure equal taxation, is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. Section 6300 Revised Statutes 1913 contemplates that all property be assessed at its true value."

*Section 6300 Revised Statutes Nebraska 1913 provides:*

"All property in this state not expressly exempt therefrom shall be subject to taxation, and shall be



valued at its actual value which shall be entered opposite each item and shall be assessed at twenty per cent of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade:

The Court further says in its opinion:

"It is finally urged that this Court shall reduce the true value of the bridge as found by the Court to 55 per cent of such value, for the reason that other property in the district is assessed at 55 per cent of its true value, and that it would be manifestly unjust to appellant to assess its property at its true value while other property in the district is assessed at 55 per cent of its true value.

"While undoubtedly the law contemplates that there should be equality in taxation, we are of the view that the plan of equalization proposed by appellant is not the proper remedy. The rule is now settled by a recent decision of this court that when property is assessed at its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced. *Lincoln Telephone & Telegraph Co. vs. Johnson County*, 102 Neb. 254. In the argument of appellant the soundness of this ruling is assailed, and authorities in other jurisdictions are cited which seem at variance with our holding. We are not willing, however, to recede from the rule of that case."

Your Petitioner relied, both in the District Court of Dakota County and in the Supreme Court of Nebraska, as shown by the record and its printed brief, upon the following propositions:

The Sioux City Bridge Company has the right not only to have its property valued at no more than its actual market value, but it has the right to be taxed upon no greater proportion of that market value than other taxpayers within the jurisdiction of the taxing authority are required to pay upon their property, and that a denial by the taxing authority of such equality of treatment denies to your petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and violates the Constitution of Nebraska.

Section 1 Article 9 Constitution of Nebraska.

Greene vs. Louis & Interurban Railroad Co., 244 U. S. 499.

Louisville & Nashville Railroad Company vs. Greene, 244 U. S. 522.

Illinois Central Railroad Co. vs. Greene, 244 U. S. 555.

Iowa Central Railway Co. vs. Board of Review, 157 N. W. Rep. 731.

The questions and propositions of law involved in this case are as follows:

### I.

Whether the action of the county taxing authorities in assessing the property of your petitioner at full 100% of its actual value for taxing purposes, while property generally in said county is assessed at only 55% of its actual value (the Constitution and laws of the State provide for equality in taxation) denies to your petitioner equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

## II.

Whether the remedy under State law as construed by the highest court of the State, requiring your petitioner to use its best efforts to have the assessments of other taxpayers raised to the basis of the assessment against your petitioner (or suffer the discrimination to continue) affords to your petitioner equal protection of the law and due process of law required by the Fourteenth Amendment to the Constitution of the United States.

Your Petitioner further avers that the present case is one in which it is proper for this Court to issue a writ of certiorari for the following reasons:

## I.

Because it is a violation of the Fourteenth Amendment to the Constitution of the United States for the taxing authorities of a State, in violation of State Law and the State Constitution to assess the property of your Petitioner at 100% of its actual value for taxing purposes while property generally in said county is assessed at only 55% of its actual value.

## II.

Because the remedy suggested by the Supreme Court of Nebraska construing the constitution and laws of the State which would require your Petitioner to use its best efforts to have the assessments of other taxpayers in the County increased to the basis of actual value, is a political remedy and not a private remedy as demanded by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and

## III.

Because the holding and decision of the Supreme Court of Nebraska in the respects mentioned are in conflict with the decision of this Court heretofore cited; and by the decision and holding of the Supreme Court of Nebraska, which is the highest court of the State in which a decision could be had, your Petitioner has been denied a right, privilege and immunity claimed under the Fourteenth Amendment to the Constitution of the United States which claim was duly made both in the District Court and in the Supreme Court of the State.

WHEREFORE, Your Petitioner prays that this Honorable Court will be pleased to grant a writ of certiorari in this case to the Supreme Court of the State of Nebraska and cause the record in this case to be brought to this Honorable Court for final review and determination.

SIoux CITY BRIDGE COMPANY,

By... **Wynar Dressler** .....  
*Its Attorney.*

STATE OF NEBRASKA }  
COUNTY OF DOUGLAS } ss.

Wymer Dressler, being duly sworn, on oath deposes and says that he is attorney for the Sioux City Bridge Company, a corporation, and also attorney of record for the above entitled petitioner, and makes this verification for and in its behalf and is thereunto duly authorized; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief; that his knowledge and belief are derived from the record in this case in his possession and custody as such attorney and from his personal knowledge of the proceedings had in the District Court of Dakota County, Nebraska, and in the Supreme Court of the State of Nebraska.

.....**Wymer Dressler**.....

Subscribed and sworn to before me this.....day  
of June, 1921.

.....  
*Notary Public, Douglas County, Nebraska.*

My Commission expires.....

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**NOTICE**

*To George W. Leamer, County Attorney, Dakota County, Nebraska; and to the Above Named Respondent:*

Please take notice that on the first Monday (being the third day) of October, 1921, upon the opening of Court, or as soon thereafter as Counsel can be heard, at the Court Room of the Supreme Court of the United States, in the City of Washington, D. C., we shall present to the Court the accompanying Petition for the issuance of a Writ of Certiorari to be directed to the Supreme Court of the State

of Nebraska, and shall ask that permission be given to present such Petition, and that the Writ of Certiorari be issued as in said Petition prayed.

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**Wymer Dressler**

*Counsel for Petitioner.*

Due personal service of the foregoing Notice and accompanying Petition for Writ of Certiorari, and of the Brief of Petitioner in support of said Petition, is hereby admitted by the undersigned, Counsel for the Respondent, this.....day of.....1921.

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*Counsel for Respondent.*

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the State of Nebraska.**

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**BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI**



*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

The opinion of the Supreme Court of Nebraska in this case recognizes that petitioner has been assessed at 100 per cent of the value of its property in Dakota County while other taxpayers are assessed uniformly at only 55 per cent of the value of their property, and that such discrimination violates the Constitution and laws of the State, but denies to your petitioner judicial relief. Petitioner is thereby denied equal protection of the law guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

In *Greene vs. Louisville & Interurban Railroad Co.*, 244 U. S. 501, this Court says in the syllabus:

"The principal if not the sole reason for adopting 'fair cash value' as the standard for valuation is as a convenient means of securing equal taxation, and, since, when the standard is systematically departed from in respect of certain classes of property, its observance in respect of others (the tax rate being uniform) would serve to frustrate its very object, it follows that, in such cases, the duty to assess at full value is not supreme but yields to the duty to avoid discrimination.

Uniformity in taxing implies equality in the burden of taxation; and this equality cannot exist without uniformity in the basis of assessment, as well as in the rate of taxation.

A decision of the state Supreme Court in holding that such discrimination is not subject to correction in the courts of the State, and that the equality and uniformity provisions of the state constitution may be enforced only by selection of proper assessing officers, is not binding upon the federal courts.

Discrimination resulting from an assessment of the intangible property of a railroad corporation by the Board of Valuation and Assessment at 75 per cent of

its actual value while the property of individuals and other classes of corporations, taxed at the same rate, is generally and systematically assessed by other and independent taxing authorities of the State at not more than 60 per cent of actual value, is violative of the provisions of the Kentucky Constitution requiring uniform taxation in proportion to value and an identical rate as between corporate and individual property; and this has been recognized by the Supreme Court of the State."

The Court further says at page 512 of the Opinion:

"It hardly is open to serious dispute that if the legislature had confided to a single body the determination of the basis of assessment of the real estate and personal property of individuals, and non-franchise corporations, on the one hand, and of the tangible and intangible property of public service corporations, on the other, the valuation of property of the latter class on the basis of 75 per cent of its actual value, while property of the former class was assessed systematically at 52 per cent, or not more than 60 per cent, of its actual value, would be inconsistent with the sections we have quoted from the Kentucky Constitution."

It will be observed that the question presented in the case at bar is identical with the question involved in the Greene case, *supra*, with this difference: In the Green case the discrimination resulted from the actions of several assessing bodies, while in the case at bar the discrimination is the result of the action of a single taxing authority and is therefore the more reprehensible.

This Court further said in the Greene case, page 519:

"The next question in order is whether the assessments have the effect of denying to plaintiffs the equal protection of the laws, within the meaning of the Four-

teenth Amendment. It is obvious, however, in view of the result reached upon the questions of state law, just discussed, that the disposition of the cases would not be affected by whatever result we might reach upon the federal question; for no other or greater relief is sought under the 'equal protection' clause than plaintiffs are entitled to under the provisions of the constitution and laws of the State to which we have referred. Therefore, we find it unnecessary to express any opinion upon the question raised under the Fourteenth Amendment."

The Greene case originated in a Federal Court of Equity which afforded relief to the plaintiff under the State Laws. But in the case at bar the proceeding originated in the state court and it is necessary, we think, therefore, for this Court to determine what rights Petitioner has under the "equal protection" clause of the Fourteenth Amendment to the Federal Constitution..

The doctrine of the Greene case is expressly approved by this Court in *Evans vs. National Bank of Savannah*, 251 U. S. 108, where the court says at pages 118, 119:

"The legal problem is precisely analogous to that involved in comparing respective burdens of taxation imposed upon different properties or classes of property; concerning which this court has more than once held that a law requiring that one class shall be taxed at the 'same rate of taxation' paid by another requires that not only the percentage of the rate but the basis of the valuation shall be the same. *Cummings v. National Bank*, 101 U. S. 13, 158, 162-163; *Greene v. Louisville & Interurban R. R. Co.*, 244 U. S. 499, 515."

And in the case of *United States vs. Osage County*, 251 U. S. 128, the Court had under consideration discrimination in valuation for assessment purposes of lands belonging to

the Indians: Answering the contention that the Federal Courts of Equity had no jurisdiction to determine the matter because there was an adequate remedy under the state laws by way of appealing to the Board of Equalization for equitable treatment, the Court justifies the interposition of the Court of Equity for various reasons, among others pp. 133-134):

"in the second place because, as the wrong relied upon was not a mere mistake or error committed in the enforcement of the state tax laws, but a systematic and intentional disregard of such laws by the state officers for the purpose of destroying the rights of the whole class of non-competent Indians who were subject to the protection of the United States, it follows that such class wrong and disregard of the state statute gave rise to the right to invoke the interposition of a court of equity in order that an adequate remedy might be afforded." (Citing many cases.)

In *Iowa Central Railway Company vs. Board of Review*, 157 N. W. 731, the Supreme Court of Iowa says:

"The paramount object of the law in distributing the burden of taxation is equality, and though property of a taxpayer is assessed at less than its true value, yet if it is assessed higher in proportion than other property, he has a just cause of complaint."

The property of your Petitioner is located partly in Iowa and partly in Nebraska. In Iowa the decisions and laws of that State require that the property of your Petitioner be assessed upon the same basis as the property of other taxpayers. In Nebraska the Constitution and Laws of the State require equality of taxation so that the taxes of your Petitioner will be on the same basis as the taxes paid by other taxpayers, but as we have seen the Supreme

Court of Nebraska refuses to enforce that equality provision of the State Constitution. This refusal by the State Supreme Court and by the taxing authorities denies to your Petitioner equal protection of the law within the meaning of the Fourteenth Amendment to the Federal Constitution.

Your Petitioner has therefore been denied a right guaranteed by the Constitution of the United States; your Petitioner has exhausted its remedy in the Courts of the State and has been denied relief by the highest Court of the State.

Your Petitioner therefore respectfully submits that the foregoing Petition for a Writ of Certiorari should be granted and the record in this case sent up for final review and determination by this Court, inasmuch as the question is one of great importance and gravity involving a right, privilege and immunity accorded to your Petitioner under the Constitution of the United States which has been denied by the Supreme Court of the State of Nebraska.

Respectfully submitted,

Wymer Dressler

.....  
*Counsel for Petitioner.*

